

**DEPARTMENT OF PERSONNEL**

**Office of the Executive Director**

**ACCOUNTS RECEIVABLE COLLECTIONS ADMINISTRATIVE RULE**

(Effective January 1, 1997)

**Section**

1.00 **PURPOSE, STATUTORY AUTHORITY, RESPONSIBILITY, APPLICABILITY, AND DEFINITIONS**

1.01 **Purpose**

The purpose of this Accounts Receivable Collection Rule is to establish policies and procedures for the collection of debts due state agencies.

1.02 **Statutory Authority**

24-30-102(2)(f)(9), CRS

24-30-201, CRS

24-30-202.4, CRS

39-21-108, CRS

1.03 **Responsibility**

It is the responsibility of the chief executive officer of each state agency to insure compliance with this Accounts Receivable Collections Rule.

.01 The Executive Director of the Department of Personnel shall:

- A. Devise methods to increase the efficiency of state agencies and the State Controller in the collection of debts.
- B. Specify the requirements for a debt to be referred to the State Controller for further steps to effect collection.

- C. Promulgate rules for the State Controller in the collection of debts.
- D. Establish procedures allowing the State Controller to utilize private counsel or a private collection agency to collect debts due the State.

.02 The State Controller shall:

- A. Advise and assist various state agencies concerning the collection of debts due the State.
- B. Institute procedures for the collection of debts referred to the State Controller.
- C. Utilize private counsel or private collection agencies to collect debts due the State.
- D. With the consent of the State Treasurer, write-off, release, or adjust any debt due the State.

.03 As directed by the State Controller, the Central Collection Service shall:

- A. Act as a "collection service" to be used by all state agencies for debts "referred" to the State Controller.
- B. Provide technical assistance to state agencies in their collection procedures.
- C. Establish guidelines for the state agencies to write-off accounts receivable.
- D. Legally assign debts due the State by contract with private counsel or private collection agencies for the purpose of collection.

1.04 Applicability

This rule is applicable to all state agencies.

## 1.05 Definitions

Administrator - The administrator of the Central Collection Service.

Claimant State Agency - All state agencies with respect to collection of debts due the State under 24-30-202.4, CRS

Claims in the Process of Collection - Any debts in the possession of the State Controller for ninety (90) days, debts on which payments are being made or on which payments have been promised, and debts on which suit has been brought.

Debt - Any liquidated sum due and owing any state agency which has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for that sum.

Debtor - Any individual, corporation, or business owing money to or having a delinquent account with any state agency whose obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

Past Due - The debt has not been paid by close of business on the due date.

State Controller - The State Controller or designee.

Tax Refund - The State of Colorado tax refund which the Department of Revenue determines to be due any individual taxpayer.

## 1.20 POLICY

It is the policy of the State of Colorado to establish collection procedures to effectively and timely collect all moneys due the State.

### 1.30 STATE AGENCY PROCEDURES

#### 1.31 Designated Responsibility

Each state agency shall designate an individual or position responsible for the collection of their accounts receivable.

#### 1.32 Accounting Procedure Requirements

Timeliness of billing and collection follow-up procedures are essential to an effective accounts receivable collection program. Accounting procedures for state agencies shall provide for:

.01 Billing for goods or services rendered as quickly as is possible.

.02 A monthly "aged" trial balance of all accounts receivable which equals the control account in the General Ledger. This record identifies those accounts receivable requiring follow up procedures. The State Controller shall establish guidelines for aging accounts receivable.

#### 1.33 Determination of Charge Rates

The charges for goods, services rendered, or moneys loaned by state agencies are generally divided into two classes:

.01 Those goods, services rendered, or moneys loaned or offered by state agencies at a designated amount to all individuals without regard to the financial status of the recipient.

.02 Those goods and services rendered for which the amount charged the recipient is based on the recipient's "ability to pay". In this event, the state agency concerned has statutory authority to set schedules of charges based on net income, net assets, and other factors affecting the ability to pay.

#### 1.34 Determination of Payment Plan

At the earliest feasible time, the state agency furnishing goods, services, or moneys loaned shall establish with the recipient, a definite schedule for repayment of the account receivable. The recipient, guardian, responsible party, or cosigner-signer,

shall clearly understand his obligations under the plan and the arrangements for repayment shall be reasonable and timely. Once the repayment plan is established, it forms the basis for the determination of when the account receivable is past due and activates the follow-up collection procedures.

#### 1.35 Credit Information

Basic to any granting of credit is the securing of adequate information to locate each debtor in event of default. Thus, the state agency records for each debtor should include the following information:

- .01 Social Security Number and / or Federal Employer Identification Number;
- .02 Current home and work address;
- .03 Current home and work phone number;
- .04 Permanent address;
- .05 Name and address of nearest relative or guardian not living with debtor;
- .06 Date of birth;
- .07 Other credit references such as banks, credit cards, and retail stores; and
- .08 Any other relevant information, as determined by the state agency.

#### 1.36 Follow-up Procedures

A timely, systematic set of procedures for follow-up action is essential in the collection process. Once an account receivable is determined to be past due, these procedures should be initiated and systematically followed until the debt is thirty (30) days past due and no further time extension has been granted by the state agency with the approval of the State Controller.

No one set of procedures is effective for collecting all types of accounts. However, the following procedures are recommended for use by state agencies:

- .01 Telephone calls.
- .02 At least one delinquency letter/collection letter, or if time permits a set of delinquency letters / collection letters starting with a polite reminder to a "final demand" letter;

A record shall be maintained indicating the action taken, person performing the action, and date of the action. This record may be coded notations on a ledger card or such other procedure as to leave a clear indication of the actions taken.

#### 1.37 Debts referred to State Controller

A state agency shall refer all debts to the State Controller for collection when the debt is thirty (30) days past due. The State Controller may grant an extension to the requirement based upon a documented and justified need provided by the state agency. Extension shall be considered on an individual basis and granted only if the State Controller determines it to be in the best interest of the State. A debt may be referred earlier if the following conditions exist:

.01 The state agency has made a valid effort to collect the debt without success. This effort shall indicate the minimal effort of sending written requests for payment and attempts to contact the debtor by phone.

.02 There are no unsettled differences between the state agency and the debtor as to the validity of charges which make up the debt.

.03 The state agency has lost contact with the debtor (letters returned with no known forwarding address, etc.). The debt is referable immediately for collection.

When a debt is referred to the State Controller for collection, the state agency shall retain it on their books pending final disposition by the State Controller.

#### 1.38 Reports From Abolished State Agencies

Should a state agency be abolished by legislative action or by an Executive Order, the individual in the state agency responsible for collection of the accounts receivable shall furnish a record of all outstanding account balances, thirty (30) days prior to the dissolution. This is necessary to maintain proper accountability for all accounts receivable of the abolished state agency.

#### 1.40 CENTRAL COLLECTION SERVICE PROCEDURES

The Central Collection Service shall have a period not to exceed ninety (90) days after receipt of the debt to use all State collection capabilities available to collect the debt.

When a state agency refers a debt to the Central Collection Service for collection, the unit will:

- .01 Determine additional procedures to be followed to collect the debt.
- .02 Contact the debtor by letter, telephone, and/or personal visit and evaluate the collection potential considering the financial circumstances of the debtor. This may require verification with third parties, such as employers, other creditors, relatives, personal references, or other agencies.
- .03 Every effort should be made to work out a reasonable payment arrangement with the debtor. However, if the debtor has the ability to pay but refuses to do so, the unit shall take whatever measures are necessary to collect the debt. These measures may include:
  - A. Civil suit to obtain judgment;
  - B. Garnishment of wages and bank accounts, file a judgment lien on real property or levy on any attachable asset;
  - C. Adjust the debt where it appears advantageous in order to liquidate the debt after consultation with the creditor state agency.
- .04 Confer with the State Department of Revenue to determine if the debtor is due any tax refunds against which the debt may be offset.
- .05 Report monthly on any collections received for the state agency to whom the debt is owed.

#### 1.41 Debt Offset Against Taxpayer's Tax Refund

- .01 Debts Referred for Offset: All debts shall be submitted to the State Controller for collection through offset.

.02 Procedure for Offset: The Central Collection Service shall submit a tape transfer as specified above to the Department of Revenue for cross-matching with the income tax accounting file. The State Controller shall certify the amount of debts due the State and subject to offset after the completion of the offset procedure, and hearing and appeal if applicable, set forth in this rule. The debtor may arrange with the Central Collection Service for payment of the debt in full before the offset is made. However, the assigning state agency shall not enter into any agreement with the debtor for payment of the debt after the offset is initiated.

.03 Notification of Intent to Offset: The Central Collection Service shall notify the debtor in writing of the State's intent to offset. Such notice shall set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, and the intention to offset the tax refund against the debt. The notice shall fully describe the manner in which the debtor/taxpayer may request a hearing.

.04 Right of Hearing: The taxpayer shall be required to submit written notice of the intent to contest the offset. Such written notice of intent to contest shall be filed with the Central Collection Service within thirty (30) days of the postmark on the notification to offset. If a hearing is requested by the taxpayer, it shall be held within thirty (30) calendar days from receipt of such request. Failure to apply for such a hearing in writing, within the thirty (30) period, shall be deemed a waiver of the opportunity to contest the offset.

.05 Apportionment of Refund: In case a joint return has been filed in which only one person is the debtor, the Department of Revenue shall notify the taxpayer that the non-debtor spouse may file a claim for payment. Based upon such claim, the Department of Revenue shall issue a refund to the non-debtor spouse. For such computation, the Department of Revenue shall apportion the overpayment based on the respective shares of the Colorado adjusted income.

.06 Disposition of Proceeds Collected: If a debtor is determined by the Department of Revenue to be entitled to a refund, the Department of Revenue shall transfer an amount equal to the refund up to the amount owed to the State Treasury for disbursement by the State Controller. No refund shall be paid to a debtor nor shall any refund be paid to the State Treasurer for disbursement until thirty (30) days has elapsed from the date of notice to offset. If during the 30-day period the Central Collection Service receives a notice of intent to contest, the administrator



shall inform the Department of Revenue which shall thereafter hold the refund until the disposition has been resolved by settlement, hearing, or court order.

.07 Hearing Procedure: Upon receipt of notice of intent to contest the offset, the administrator shall schedule a hearing to be held within thirty (30) days from the time of filing. This hearing shall determine if the offset is proper and the claim is valid.

If the State cannot schedule a hearing within thirty (30) days from the date a request is filed, the account shall be deleted from final submission on the offset tape so that the refund can be automatically returned to the taxpayer. Return of this sum shall not constitute a waiver on the part of the State for the debt.

The administrator of the Central Collection Service shall have the authority as set forth in 24-4-105, CRS, to schedule and hold hearings. The administrator shall prepare, file and serve upon each debtor, the decision. In the absence of any appeal to the State Controller within fifteen (15) days after service of the decision of the administrator, unless extended by the State Controller, such decision of the administrator shall thereupon become the decision of the State Controller. If there is reasonable doubt of the validity of the debt, the administrator shall recommend write-off of the debt, deleting the account from the final submission tape to the Department of Revenue.

Upon receipt of a timely appeal of the administrator's initial decision, the State Controller shall enter a decision based on a review of the administrator's written decision along with any additional documentation submitted by the taxpayer. The State Controller shall have thirty (30) days from the date of the appeal to render his decision. If the State Controller fails to comply within this time frame, the refund shall automatically be returned to the taxpayer. However, return of this sum shall not constitute a waiver on the part of the State of the debt due.

The decision of the State Controller shall be final unless appealed through the Colorado State Court System in accordance with applicable law.

.08 Final Disposition and Notice of Offset: Upon receipt by the Central Collection Service of a debt from the claimant state agency, the Central Collection Service shall make final disposition of the offset by transferring the net proceeds collected for credit or payment and refund any remaining balance due the debtor.

Upon final determination of amount of the debt due and owing by means of the hearing, or waiver of hearing as provided by Section 1.41.04 of these rules, the Central Collection Service shall initiate the transfer of funds to be applied towards the debtor's obligation.

Upon transfer of funds to credit the debtor's account, the Central Collection Service shall notify the debtor, in writing, of the final disposition of the offset. Such notice shall include a final accounting of the tax refund which was offset, including the amount of the tax refund to which the debtor was entitled prior to offset and the amount of the debt due and owing the debtor by the Department of Revenue. If there is an outstanding balance due the State after the offset, the debtor shall be notified in writing. A partial offset is not a compromise of the total amount due.

.09 Priorities in Claims to Offset: Priority in multiple claims to refunds allowed to be offset shall be in the order in time which a state agency has referred the debt to the Central Collection Service for collection.

#### 1.50 DEBTS REFERRED TO PRIVATE COLLECTION AGENCIES

.01 No later than ninety (90) days after receipt by the State Controller shall all debts which are not claims in process of collection be legally assigned to private counsel or private collection agencies that have been approved by the State Controller.

.02 The private counsel or private collection agencies utilized to collect debts due the State shall be selected through competition pursuant to the provisions of the procurement Code, Articles 101 to 112 of Title 23, CRS. Criteria for the selection of private counsel or private collection agencies shall be developed by the executive director of the Department of Personnel in consultation with the State Controller, affected state agencies, and the private collection community.

.03 Before utilizing private counsel or private collection agencies to collect a debt, the State Controller shall determine that the debt is a liquidated claim due the State or a state agency.

.04 The amount retained by private counsel or by a private collection agency for collection of a debt shall be at a negotiated rate.

#### 1.51 Remittance of Proceeds Recovered From Debts and Reporting Requirements

Private counsel and private collection agencies utilized to collect State debt shall account for and remit to the State Controller the net proceeds recovered on such debts at least once every thirty (30) days. The Central Collection Service shall be provided a written report, by month and fiscal year to date, of collection activities including the following information with respect to each current collection matter:

.01 The number and dollar value of each debt to be collected, the name of the debtor, type of debt, the state agency from which the debt was derived, and the month in which the debt was received for collection.

.02 All amounts actually collected on each debt, or a statement that the debt was adjusted or that a debt is not collectible, if such is the case.

.03 The date any lawsuit was filed for collection, and the date any judgment was obtained against the debtor. Prior approval shall be obtained by the State Controller, in consultation with the creditor state agency, before any legal action is filed.

.04 The average total debt balance of all accounts, dollar amount collected, recovery rate, and commission percentage and amount. All figures shall be related to the month in which the debt was received.

.05 Other reports required by the Central Collection Service.

#### 1.52 Separate Trust Account

Every private counsel and private collection agency shall establish a separate trust account in the name of and within the State of Colorado in which all moneys due the State shall be deposited and maintained until remitted to the State.

#### 1.53 Assignment of Debts

All debts assigned to private counsel or private collection agencies for collection by the State Controller are subject to the terms and conditions set out in this rule.

.01 A private collection agency which has been assigned a debt for collection, shall, at its own expense employ legal counsel to handle litigation necessary to collect the debt.

.02 If litigation is filed, all costs associated with the litigation are the sole responsibility of the private counsel and / or private collection agency filing the litigation.

.03 A private counsel or private collection agency which has been assigned a debt for collection shall not adjust or settle any debt so assigned without prior approval of the State Controller (through the Central Collection Service), and State Treasurer in consultation with the creditor state agency.

.04 Private collection counsel or private collection agencies shall refer to the Department of Law all requests by state agencies for legal advice on questions of practice, policy, and procedure related to the legal representation of the state agency and shall not represent the State of Colorado in any litigation. The Central Collection Service shall be notified within three (3) working days of any threatened or actual legal action naming the State of Colorado or any of its state agencies, institutions, employees, or officers as a party.

#### 1.54 Further Restrictions on Employment

Any contract awarded to private counsel, private collection agencies or to any special collection counsel retained by the State of Colorado shall require that the individual or firm remain licensed under the respective occupational licensing statutes or regulation during the term of the contract. Such contract shall require that a private counsel or private collection agency shall at all times act in compliance with the provision of the "Colorado Fair Debt Collection Practices Act", Article 14 of Title 12, CRS, and in compliance with any rules or regulations promulgated by the executive director of the Department of Personnel.

Every contract pursuant to this rule shall provide that the private collection agency or private counsel, its employees, agents, and legal counsel utilized by the private collection agency, private counsel, and special collections counsel, shall not violate any provisions of the following:

.01 The "Fair Debt Collection Practices Act", Public Law 95-109, 15 U.S.C. 1691, et seq., and for this purpose special collection counsel and legal counsel utilized by a collection agency shall be deemed to be a "debt collector".

.02 Chapter 2 of the rules of the State Collection Agency Board, and for this purpose, special collection counsel shall be deemed to be a "debt collector" and a "licensee".

.03 Any requirement of State or Federal law which is applicable to or has been incorporated in any agreement which created the debt which is sought to be collected.

.04 Any assignment or transfer of any debt under these rules may be revoked at any time by the State Controller without cause.

In addition, no contract for the collection of State debts shall be awarded for a term in excess of three (3) years. Private collection agencies or private counsel may be allowed to receive payments on debts for which payments have been previously received by the private collection agency or private counsel, unless recalled by the State Controller.

#### 1.60 WRITE-OFFS

##### 1.61 Write-off of Accounts Receivable

The criteria for writing-off accounts receivable is:

.01 Debts of fifty-dollars (\$50.00) or less may be written off after the state agency has completed its thirty (30) day collection effort and after the Central Collection Service has completed their tax offset procedure without results. These accounts may be written off without approval from the Central Collection Service or consent of the State Controller and the State Treasurer after they have been returned to the creditor state agency by the Central Collection Service. The procedure for writing off debts of fifty-dollars (\$50.00) or less is to notify the Central Collection Service in writing of the total amount and number of the accounts to be written off under this procedure. A detailed listing of each account and dollar amount is to be maintained by the state agency for audit purposes.

.02 Accounts greater than fifty-dollars (\$50.00) shall only be written off when they have been determined by the Central Collection Service to be not collectible, and with the consent of the State Controller and the State Treasurer. A state agency request for such approval shall include:

- A. The number of accounts to be written off;
- B. The dollar amount of such accounts;
- C. For each account, list the debtor, amount of the account, and a brief statement of why the state agency believes it is not collectible;
- D. A statement by the responsible individual in the state agency that, in his opinion, the accounts are not collectible.

#### 1.62 Agency Approval of Accounts Receivable Write-offs

Within the state agency, the write-off of accounts receivable shall be approved by:

- .01 The individual responsible for accounts receivable collection, and/or
- .02 The supervisor of the individual responsible for accounts receivable collection or designee.
- .03 The approval of the chief executive officer of a state agency may be required to write off accounts receivable.

#### 1.63 Collections After Write-off

After consultation with the creditor state agency, the Central Collection Service, private counsel, and private collection agencies may continue their collection processes even after the state agency has been allowed to write-off the debt.

#### 1.70 CHARGES

1.71 Interest and Cost of Collection

Interest shall be charged and costs of collection shall be added, including attorney fees, to all debts due the State as required or permitted by law or agreement with the debtor, including but not limited to section 5-12-102, CRS.

1.72 Charges to State Agencies for Collection Services

The Central Collection Service shall charge the state agencies the estimated cost of collection.

1.80 DISTRIBUTION OF RECOVERIES

All amounts collected by the Central Collection Service shall be disbursed to the state agencies, net of collection costs.

1.90 ADMINISTRATIVE HARDSHIP

Should any of the provisions of this rule create undue administrative or financial hardship on any state agency, a written request for exemption and/or alternative policy shall be submitted by the state agency's chief fiscal officer through the state agency's chief executive officer to the executive director of the Department of Personnel.